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South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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Legislative Update

Bills Introduced

Budget & Financial Matters

Increase Homestead Exemption (H.2230). This proposal would increase the homestead exemption to 30% of a home's value; a minimum exemption of \$10,000 would be provided.

Justice

Fair Housing Law (H.2204). This bill would create the South Carolina Fair Housing Law to prohibit discrimination in real estate transactions; the Human Affairs Commission would have the authority to investigate complaints.

Lengthen Family Judge Term (H.2238). Currently Family Judges serve a four year term; this bill would lengthen that to six years.

No More High Speed Chases (H.2252). Law enforcement officers would be forbidden to exceed the speed limit by more than 15 miles per hour when in pursuit--the only exception would be where immediate physical danger threatens.

Environment & Energy

Drought Response Plan and Interbasin Water Transfers (H.2243, H.2244). These measures are part of a wide-ranging water policy movement that is being introduced into the Legislature this session. The *Research Report* in this issue of the *Update* goes into more detail on these proposed bills.

Banning Out-of-State Nuclear Waste (H.2264). Act 91 of 1983, declared it the public policy of this State to provide for an effective means for the safe and efficient disposal of low-level radioactive waste. Key to the disposal of such wastes are the interstate compacts allowed by the federal Low-Level Waste Management Act of 1980. However, the Congress has failed to ratify the Southeast Interstate Low-Level Radioactive Waste Management Compact of which South Carolina is a member. This bill would prohibit outside nuclear waste from being transported into South

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Carolina after January 1, 1986, "unless and until the Southeast Interstate Low-Level Radioactive Waste Management Compact is approved by Congress."

Education

Superintendent of Education (H.2228, H.2229). The first bill would provide that the Superintendent of Education is chosen by a majority vote of the State Board of Education for a four year term. The second bill proposes a constitutional amendment to remove the Superintendent of Education from the list of elected state officials.

The question arises, how are the Superintendents of Education (or the chief state school officer) chosen in other states? There are two basic methods: election or appointment. Each of these subdivides into categories of various combinations.

Only 18 states elect their chief education officer; all the others use some form of appointment, either by a single entity such as the State School Board, or appointment and approval, as by the Governor and the Senate. The following list is taken from *The Book of the States, 1984-85*.

Appointed by Board: Alabama, Colorado, Delaware, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, Ohio, Rhode Island, Utah, West Virginia.

Appointed by Governor: Tennessee

Appointed by Board, Approved by Governor: Alaska, Arkansas, Minnesota, Vermont.

Appointed by Board, Approved by Senate: Texas

Appointed by Governor, Approved by Senate: Iowa, New Jersey, Pennsylvania, South Dakota

Appointed by Governor, Approved by Legislative Committee and Senate: Maine

Appointed by Governor, Approved by Both Houses: Virginia

Appointed by Governor, Approved by Either House: Connecticut

Elected, Constitutional Office: Arizona, California, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Montana, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Washington, Wisconsin, Wyoming

Elected, Statutory Office: Indiana

Special Feature

Editorial Comment on the Legislature

"The primary office of a newspaper is the gathering of news ... comment is free, but facts are sacred." Charles Prestwick Scott, editor of the *Manchester Guardian*, on the paper's one hundredth anniversary. Very well, Mr. Scott. Putting aside the sacred let us review the free comments of newspapers around South Carolina on the subject of this session of the General assembly. The following issues have been touched upon in editorials so far this year.

Indigent health care leads the list. The proposed legislation to cover the increasing costs of such care has won support from four of South Carolina's newspapers: the *Charleston Evening Post*, the *Greenville News*, the *Greenville Piedmont*, and the *State*.

The *Charleston* paper commented that: "In concept, the medically indigent assistance act proposed for South Carolina looks good." The editorial did raise a couple of points: "the definition of indigency, the extent of local control, the capping of benefits and the question of who would manage the central fund--the Department of Social Services, DHEC, or neither?"

The *Greenville News* also noted a potential flaw in the plan: "A weakness is the plan's dependency on \$55 million in federal money at a time the federal government is grasping for budget cuts." Still, the *News* supported the plan, while admitting that some counties would oppose paying money to cover health costs for the poor: "This progress invites resistance from counties whose indigent health problems are being addressed at someone else's expense. But the need for change in improving funding and care for the poor, coupled with the realization that paying patients who now subsidize health care for the indigent live throughout the state, should crumble selfish protest."

The *State* considered that the plan "may well be the central issue of the 1985 Legislature," and admitted that "since the problem is statewide, it requires a statewide solution." The editorial noted that many counties would be adverse to paying indigent costs, and so "the proposal is loaded with trouble, as worthwhile and necessary as the legislation may be."

The *Greenville Piedmont* came out strongly in favor of the plan, seeing it as a way to at least reduce the "glaring inequities" in the current system of indigent health care. The paper quoted Rep. Helmly, chairman of the Health Care Planning and Oversight Committee as saying, "It's only fair" for every country to take on an equitable share of caring for the poor. The *Piedmont's* comment was, "The validity of his statement is undeniable."

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Second to indigent health care in the minds of newspaper editors was the issue of Friday legislative pay. Both the Augusta (Ga.) *Herald* and the Florence *Morning News* ran editorials commenting on the "backdoor" pay raise. The *Herald* opined from across the state line: "Taxpayers ought to remind legislators who might be tempted to revive this measure [Friday pay] that no one forced them to run for office. They knew full well what the pay and expenses were going to be from the first day of their campaigns, and if they didn't like it they shouldn't have stood for office in the first place!"

The Florence paper noted that the House "to its credit" voted not to accept the extra day's expense allowance. And the Charleston *Evening Post* also commended the House for voting down what the *Post* called "the most blatant portion of the backdoor pay raise approved a few months ago."

The *State* ran an editorial on Blue Laws, calling for their repeal. "What has now become almost an open rebellion against South Carolina's Blue Laws underscores the ridiculousness of retaining old laws whose time has passed," the *State* thundered. It decided that the Legislature should "take the issue with dispatch," and concluded: "There is strong hope and convincing evidence that the days are numbered for these antiquated laws that unfairly restrict freedom of the state's citizens. The Legislature should move promptly to convert that hope into reality."

Local revenue raising powers were the subject of an Anderson *Independent-Mail* editorial. The paper noted that local governments were in danger of facing "severe financial problems if the proposals to eliminate federal Revenue Sharing are enacted into law." Only property taxes are currently available to localities, the *Independent-Mail* wrote, but these are not sufficient for future needs. The paper advocated that the General Assembly "increase the range of tax powers available" to local governments.

Freshmen Representatives and Senators were the subject of another *State* editorial. The freshmen can rest easily: the *State* approves of them, especially the new Senators. According to the *State* they can "help improve the Senate's image--a welcome contribution by the newcomers."

Finally, the *Chester News and Reporter*, which proudly announces itself as "A newspaper devoted to Chester County," ran an editorial reviewing the key issues that need action this session. Indigent medical care was high on the list, and the *News and Reporter* maintained that "The problem is too great for county governments, local hospitals and paying patients to handle alone." The correctional system was also a topic noted by the paper:

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"This state must continue to seek new ways to address its penal problems through more refined programs, such as work-release, as an alternative to incarceration. It must also work to dispel the costly 'lock 'em up and throw away the key' mentality that is still too prevalent in society and the legislative halls. True, some inmates deserve long sentences and shouldn't be allowed access to work release, but let that be decided on the merits of each particular case."

And finally the *News and Reporter* urged some definitive action on the Blue Laws--either enforce them or repeal them, but don't leave them hanging in their current limbo of uncertainty.

That, in brief, is what the newspaper editorials have been saying thus far in the latest session of the South Carolina General Assembly.

In order to enjoy the inestimable benefits that the liberty of the press ensures, it is necessary to submit to the inevitable evils that it creates.

Alexis de Tocqueville

The newspapers! Sir, they are the most villainous--licentious--abominable--infernal--Not that I ever read them--no--I make it a rule never to look into a newspaper.

Richard Brinsley Sheridan

The people are the only censors of their governors, and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them.

Thomas Jefferson

Water Resource Legislation: State Water Policy, Lawsuits, Drought Plans & Interbasin Transfers*

Summary

Water is South Carolina's most essential natural resource. Water of sufficient quantity and quality is of vital interest to every segment of the State's population. Water is necessary to: sustain life, irrigate agricultural lands, generate power, support fish and wildlife, provide transportation routes, provide recreational opportunities, and dilute municipal, industrial and agricultural pollution.

Even though water is plentiful and is a renewable resource, increasing demands from a growing population may present future water-related problems. Proposed legislation has been introduced to establish a state water policy, that recognizes the public's interest in water (H.2104) Further proposed legislation would cover two specific water situations: what to do in case of drought, (H.2243) and how to regulate transfers of water from one riverbasin to another (H.2244).

Background

Ninety seven percent of the Earth's water supply rests in the oceans. The remaining 3% is fresh, of which 2/3 is locked up in glaciers and polar ice caps, leaving only 1% of our total water supply available for human use.

In South Carolina, 96% of the State's water comes from surface water, drawn from four major river basins: Pee Dee, Santee, Ashley-Combahee-Edisto, and Savannah; and over 1,400 ponds and lakes. Even though only 4% of the State's total water needs are met

*Information for this report was provided by Ann Nolte of the South Carolina Water Resources Commission; additional information came from the *South Carolina Water Assessment* published by the Commission.

by ground water supplies, over 40% of the State's population depends on these underground sources for their domestic needs. The Piedmont and mountain areas rely primarily on surface water to fulfill needs, while the Coastal Plain and Midlands find ground water more plentiful. Increased pumpage in some coastal areas has caused reductions in the water table to the extent that some fresh water aquifers are suffering from salt-water intrusion.

Existing Laws Concerning Water Use

Water law in South Carolina is embodied in the riparian doctrine. This is a common law doctrine that doesn't reside in statute, but one that has been declared and interpreted by the courts. The riparian (water-related) doctrine provides that "owners of lands along the banks of a stream or water body have the right to reasonable and beneficial use of the waters and the (related) right of protection against unreasonable use by others that substantially diminishes the quantity or quality of water." (R.E. Clark, *Water and Water Rights*, 1967).

The riparian doctrine has certain aspects which must be considered in regards to a statewide water policy. First, a civil action is the sole mechanism for enforcing and maintaining riparian rights. Since law suits are handled on a case-by-case basis, no broadly applicable decisions are available regarding protection of water resources in general, as opposed to providing security to beneficial private uses. In addition, actions taken under the riparian doctrine are ex post facto--which means that competing uses of water are often in operation before a decision is made about the situation. Finally, the riparian doctrine is not uniformly enforced. A great deal of water is currently being transferred from one watershed to another in the upcountry, and along the coast Beaufort, Charleston and Georgetown make considerable interbasin transfers.

The following chart illustrates South Carolina's six largest water uses in 1980 by category--agriculture, industry, etc.

South Carolina Water Use, 1980

	Gross Use				Consumptive Use		
	Ground Water mgd	Surface Water mgd	Total Use mgd	% of State Use	Con- sumptive Use mgd	% Consumed	% of State Consum
Public Supply	82.2	298	380	6.6	102.6	27	23.5
Domestic Wells	57.3	---	57.3	1.0	48.7	85	11.1
Agric. Irrigation	14.8	41.3	56.1	1.0	56.1	100	12.8
Agric. Livestock	5.5	4.5	10.0	0.2	10.1	100	2.3
Industry	46.4	858	905	15.6	167.4	18.5	38.1
Thermoelec. Power	---	4,370	4,370	75.6	53.5	1.2	12.2
Total	206.2	5,571.8	5,780	100.0	438.4	---	100.0

Gross water use refers to the total withdrawal of water from a water source; some or all of the withdrawn water may eventually be returned to the source after its use.

Consumptive water use means the amount of water withdrawn that is not directly returned to the source.

mgd--million gallons per day, the standard measurement of water use or consumption.

Gross water use in South Carolina almost doubled between 1970 and 1980, to 5.78 billion gallons per day. Water use will continue to increase, with the greatest percentage increase by agricultural irrigation, and the largest volume increase by thermoelectric power generation and industry. The chart on page 2 shows the relative proportions of water users in South Carolina. Although we "consume" less than 8% of the total water used, this consumption has doubled in the last 20 years and is expected to triple by 2020.

Some Definitions

In order to follow the sometimes technical discussions concerning water use and water resources, the following definitions should be kept in mind:

Interbasin Transfer A transfer of water from one watershed to another watershed.

Major Transfer A transfer involving one million gallons of water per day on any day, or five percent of the 7Q10 flow level, whichever is less.

7Q10 flow The lowest average flow expected during seven consecutive days on the average of once in 10 years. The low flow value is used to assess reliability of streamflow during low rainfall periods. The seven day period is used to minimize effects of daily fluctuations and short term events.

State Water Policy

H.2104 would recognize the public's interest in water, and seek to provide for the following points for water in the state:

1. Water is put to the maximum beneficial use. Water is used efficiently and conserved for future generations.
2. All water resources (surface and groundwater) are to be inventoried and future uses of the resource will be projected.
3. A comprehensive state water resources policy will be formulated.

4. The water within the State would be controlled, developed, and used so that withdrawals from a given watercourse, aquifer, lake or other water body are not significantly harmful to the water resources or ecology of an area. See "Interbasin transfers," below.

5. Interstate water use policies are to be developed.

A related bill, H.2105, would have the Attorney General receive a copy of the pleadings in cases relating to water rights. If the interests of the State are directly affected, the Attorney General could intervene or otherwise participate in the case. At present, as has been noted above, water right cases are issues between individuals, without regard to the general nature of the resource in question.

Proposed Drought Bill

Drought, like hurricanes or tornadoes, is an unpleasant yet inescapable act of nature. Nevertheless, even the effects of a severe drought can be substantially reduced with thoughtful, comprehensive planning. Many states, such as Florida and Colorado, have prepared a drought response plan to alleviate economic, agricultural and social hardships caused by drought. No such plan exists in South Carolina. The consequences of even a moderate drought are far-ranging; questions are raised concerning not only domestic and municipal uses of water, but also agricultural, industrial, fish and wildlife concerns, and recreational uses.

The two main goals of the proposed drought legislation are: 1. To establish drought criteria to determine the onset and duration of drought, based upon objective scientific measurements. This regulatory authority will be used only in the geographic areas which are most severely hit. 2. To establish a system of responses that correspond to the severity of the drought. There would be three levels of measures to be taken, increasing as the drought conditions worsen:

1. Initially, the response would involve promotion of public education of the existing and potential drought conditions and water conservation measures necessary to alleviate each phase of the drought.
2. If conditions worsen, and voluntary conservation measures prove insufficient, the Water Resources Commission could by regulation curtail nonessential water uses. This could only occur with the approval of the drought response committee. Nonessential uses would be determined following public comment and input from interested state agencies.

3. In the event of a drought affecting the health, safety, or welfare of the citizens of an area, the existing powers of the Governor would be extended so he could respond effectively to the emergency situation. Currently, the Governor's authority in an emergency is limited to fifteen days. Past experience shows this to be an insufficient amount of time. Under the proposed legislation the Governor's authority would be extended for as long as emergency conditions warranted.

The bill would also direct public water suppliers to develop and implement drought and water shortage response ordinances or plans. These would have to be consistent with the state drought response plan.

Interbasin Transfer of Water

When water is taken from one river system or watershed and diverted to an area that is in a different river system or watershed we have an "interbasin transfer" of water. The water that is taken from one system is "lost" to that system--and persons who depend upon that system for their water are definitely affected. Withdrawals of such surface water, regardless of quantity, are not currently regulated in South Carolina, and many large withdrawals of surface water are occurring or are under consideration. The impact of these withdrawals is significant now and will be even more significant in the future. Legislation has been proposed to regulate such transfers, allowing the state to analyze and review such withdrawals, and develop a state policy to regulate them.

Interbasin transfers of water are currently authorized by special acts of the General Assembly. However, no mechanism exists requiring that these long-term withdrawals and transfers of waters be examined and authorized by an oversight body dedicated specifically to water resource management. The proposed legislation has the following three goals:

1. To give the Water Resources Commission oversight authority for major interbasin transfers of water. Anyone wanting to make a major interbasin transfer would have to first obtain a state permit.
2. To clarify the status of existing major interbasin transfers and those currently under construction.
3. To ensure that all interbasin transfers are evaluated thoroughly so that both short-term and long-term water needs of all waterbasins involved are considered before private or public funds are committed.

The proposed legislation would authorize the Water Resources Commission to regulate major interbasin transfers of water between the 15 major river sub-basins in the state (see map at end of this report). Anyone proposing to make a major transfer would first have to obtain a permit from the Commission. Before issuing a permit the Commission would have to study the proposed transfer and determine if the benefits would exceed any costs or problems suffered by either riverbasin involved. The Department of Health and Environmental Control would have to certify that the proposed transfer would not violate the Water Classification Standard System Regulation or the Stream Classification Regulations or adversely affect the public health and welfare.

The Commission would have the authority to establish regulations which set standards for evaluating the effects of a proposed interbasin transfer. These regulations would take the following five points into consideration:

1. How the water would be used in the riverbasin it is transferred into.
2. The total amount of current water use and estimated future amount of water use in the riverbasin of origin.
3. The impact of a transfer on the economy and general welfare of both the original and receiving riverbasins.
4. Impact on interstate water use.
5. The availability of water in the riverbasin of origin to respond to emergencies,--including drought.

Before a permit is issued persons affected by the proposed transfer would have to be made aware of it and given the chance to voice their concerns to the Commission. Permits would be issued for either 20 years or a period considered reasonable by the Commission.

Existing interbasin transfers would be grandfathered-in under the proposed legislation, provided that: the transfer is registered with the Commission within 6 months after the law takes affect; the total amount of the transfer does not exceed the capacity of the facilities used as of December 1, 1984, or of facilities substantially under construction by that date.

Conclusion

Water use in South Carolina will continue to grow; by 2020 water use should expand by 50%--up to 8.55 billion gallons a day. How the state will protect and regulate this vital resource is the subject of considerable debate--and great importance.